

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7-12-2007

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.Nos.17596, 17651 and 19069 of 2006
and

MP No.1 of 2006 in WP No.17596/2006

and

MP No.1 of 2006 in WP No.19069/2006

Chandrakumar Thomas

... Petitioner in
all petitions

vs

1.Government of Tamil Nadu
rep. By Secretary to Government
Home (Police) Department
Fort St. George
Chennai 600 009.

2.The Director General of Police
Chennai 600 004.

... Respondents in
WP 17596/2006 and
Respondents 1 & 2
in WP 17651 &
19069/2006

3.The Inspector General of Police
Law and Order
Chennai 600 004.

.. 3rd Respondent in
WP 17651 and
19069/2006

4.The Deputy Inspector General of
Police
Vellore Range, Vellore.

5.The Superintendent of Police
Salem.

.. Respondents 4 & 5
in WP 17651/2006

6.The Deputy Inspector General of
Police
Villupuram Range, Villupuram.

.. 4th Respondent in
WP 19069/2006

WP No.17596/2006 filed under Article 226 of the Constitution of India praying for a writ of mandamus to direct the respondents to include the name of the petitioner in the ensuing panel of Deputy Superintendent of Police, fit for promotion as Additional District Superintendents of Police, in the appropriate place therein and to promote him as such.

WP No.17651/2006 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records in (1) Govt. Lr.No.55654/Pol.2/2005-2, Home (Police.II) Department, dated 12.7.2005 of the first respondent; (2) Pro.Rc.No.126247/AP.II(2)/2001 dated 30.6.2001 of the second respondent; (3) Pro.No.131/AP.2(2)/97 dated 21.8.1997 of the third respondent; and (4) Pro.Rc.No.B3/PR.44/96 dated 3.3.1997 of the fourth respondent, quash the same and issue consequential directions to the respondents to restore the monetary benefits due and payable to the petitioner which were withheld due to the impugned order of penalty.

WP No.19069/2006 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records in (1)G.O.(2D) No.380, Home (Police.IV) Department, dated 14.11.2002 (communicated on 12.7.2005 of the first respondent); (2) Pro.Rc.No.177357/AP.II(2)/2000 dated 20.6.2001 of the second respondent and (3)Ro.No.297/99(C.No.B2/PR.44/99) dated 2.7.1999 of the fourth respondent and quash the same.

For Petitioner : Ms.R.Prasana Devy

For Respondents : Mr.S.Gopinathan
Additional Government Pleader

COMMON ORDER

This order shall govern the above three writ petitions.

2.WP Nos.17651 and 19069 of 2006 have been brought forth challenging the punishment awarded to the petitioner, while WP No.17596 of 2006 has been filed seeking for a direction to the respondents to include the name of the petitioner in the ensuing panel of Deputy Superintendent of Police for promotion as Additional Superintendents of Police.

3.The Court heard the learned Counsel on either side and looked into the grounds.

4.The gist of the case of the petitioner in WP 17651/2006 seeking a writ of certiorarified mandamus to quash the punishment awarded to him, is that the petitioner while he was serving as Inspector of Police at Salem, was served with a charge memo under Rule 3(b) of the Tamil Nadu Police Subordinate Service (D & A) Rules stating that there was gross neglect of duty in not controlling rowdyism in Salem Town Police Station limits during May 1994 and not arresting 10 accused concerned in Salem Town Police Station Crime No.606/94 under Sections 363 and 302 of I.P.C. and Crime No.711/94 under Sections 147, 148 and 302 of I.P.C. and thereby enabling them to surrender in the Court of law; that there was gross neglect of duty in not enforcing I.T.P. Act strictly in Salem Town Police Station limits during March 1994; that there was a slack supervision and control over his subordinate Grade I PC 1123 Thiyagarajan and failure to report about his activities to superiors from July to December 1993; that there was gross neglect of duty in not enforcing prohibition Act strictly in Salem Town Police Station limits during July to September 1993; that on

service of the charge memo, he made his explanation; that the Superintendent of Police was appointed as Enquiry Officer who enquired into the charges and the explanation filed by him; that since the explanation was not found satisfactory, charges were framed; that the Enquiry Officer, on enquiry and looking into the materials found that the charges were proved, on the strength of which, a further representation was also called for; that the same was also submitted; that the Deputy Inspector General of Police, Vellore Range, passed the final orders finding him guilty and imposed a penalty of reversion in time scale of pay by three stages for three years with cumulative effect; that against the said order of punishment, he preferred an appeal before the Inspector General of Police (Law and Order), Madras, who by an order dated 21.8.1997, reduced the punishment into one of reduction in the time scale of pay by two stages for one year without cumulative effect; that further, there was an appeal made to the Director General of Police, which was also rejected; that following the same, he also made a mercy petition which was also dismissed, and under the circumstances, he has brought forth this writ petition.

5. According to the learned Counsel for the petitioner, there was a strict enforcement of the provisions of the ITP Act in the Salem Town Police Station limits, and the allegation that there was neglect of duty in controlling the rowdyism in Salem Town Police Station limits was not correct. Added further the learned Counsel that the enforcement of prohibition Act was strictly done; that under the circumstances, the evidence though in favour of the petitioner, has not been properly considered, and hence, the punishment has got to be quashed.

6. This Court is of the view that after looking into the materials, the enquiry officer has given a detailed report which was rightly accepted by the D.I.G., and punishment was also imposed. On appeal, there was a reduction in punishment. Now, the contentions put forth by the learned Counsel for the petitioner, do not merit acceptance. Under the circumstances, this Court is unable to notice any reason to interfere in the order, since it is both legally and factually found to be correct. Taking into consideration the charges levelled against him, though originally, there was reversion in the time scale of pay by three stages for three years with cumulative effect, it was subsequently reduced on appeal by the appellate forum into one of reduction in the time scale of pay by two stages for one year without cumulative effect. This Court is of the view that the punishment imposed, is neither unreasonable nor disproportionate. Hence, WP No.17651/2006 does not carry merit, and it has got to be dismissed.

7. WP No.19069/2006 is also to quash the punishment accorded to him. A charge memo was served upon him that there was gross neglect of duty and perfunctory investigation of Ammapet Police Station Cr.No.757/93 under Sections 147, 148, 341 and 302 of I.P.C. which paved way for the acquittal of the case on 25.4.1995. When the charge memo was served upon him, he denied the same by way of an explanation. The Superintendent of Police was appointed as Enquiry Officer who conducted the enquiry and found that due to the neglect of duty on the part of the petitioner, the case ended in acquittal, and under the circumstances, it is a fit case where punishment has got to be imposed. Following the report, a further representation was called for by the Deputy Inspector General of Police, Villupuram, and accordingly, he imposed the penalty of reduction in the

time scale of pay by two stages for two years with cumulative effect. Then, he preferred an appeal. The appeal was rejected. Thereafter, he preferred a review application, which was also rejected. Under the circumstances, he has brought forth the above writ petition before this Court.

8.The only contention of the petitioner's side is that the case did not end in acquittal in view of any defect in the investigation; that on the date of investigation, he was not the concerned officer; but, the concerned Inspector of Police was on leave, and hence, the matter was entrusted to him for investigation; that with the assistance of one Gopal, the Sub Inspector of Police, he conducted the investigation; that the investigation was properly done; that under the circumstances, there was no reason to find fault with him when there was neither neglect of duty nor gross neglect of duty in carrying out the investigation, and hence, the lower authorities have not considered either the factual or the legal position and arrived at the conclusion; that the finding of the Enquiry Officer is not correct, and hence, the punishment has got to be set aside.

9.After looking into the averments and the submissions made, this Court is able to see that the investigation in Crime No.757/93, a case of murder, was entrusted to the petitioner herein. It is also true that on the relevant date, the Inspector of Police, Ammapet Police Station, was actually on leave, and the matter was entrusted to him, and he took up the investigation. As could be seen from the materials, the inquest report did not contain his signature, and that was one of the main reasons which led to the acquittal of the accused and threw suspicion over the investigation process. From the affidavit filed, it could be seen that actually all the statements under Sec.161 of Cr.P.C. were prepared by the Head Constable and by inadvertence, he has not obtained the signature of the petitioner in the inquest report, and it is not wanton, but it has taken place inadvertently, and under the circumstances, it cannot be stated that there was neglect of duty. Now, at this juncture, it is pertinent to point out that while the Court of Session has considered that there was no proper investigation and that was one of the main reasons for acquittal and in a case like this where the petitioner was entrusted with the investigation of a case of murder, he should exercise more vigil and care in making the investigation. The contention put forth by the petitioner's side that the inquest report was prepared by the Head Constable and by inadvertence, he has not obtained the signature of the petitioner, can, at no stretch of imagination, be accepted as an explanation. A duty was entrusted to him; but, he has thoroughly failed and that too in a case of murder, which also ended in acquittal because of the defective investigation. Under the circumstances, it cannot, but be termed only as gross neglect of duty. While imposing the punishment, the authority has taken a lenient view. Under the circumstances, there is nothing to interfere in the orders of the authorities below. Hence, WP No.19069/2006 deserves an order of dismissal.

10.WP No.17596 of 2006 has been filed seeking for a direction to include the name of the petitioner in the promotion panel. The result of this petition depends upon the result in the above two writ petitions. In the above two writ petitions, the punishments imposed, are found to be correct, and both are dismissed. Following that dismissal, the petitioner cannot have any grievance for non-inclusion of his name in the panel for promotion. Accordingly, WP No.17596/2006 has got to be dismissed.

11.In the result, all the above three writ petitions are dismissed.
No costs. Consequently, connected MPs are also dismissed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Secretary to Government
Government of Tamil Nadu
Home (Police) Department
Fort St. George
Chennai 600 009.
- 2.The Director General of Police
Chennai 600 004.
- 3.The Inspector General of Police
Law and Order
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- 4.The Deputy Inspector General of
Police
Vellore Range, Vellore.
- 5.The Superintendent of Police
Salem.
- 6.The Deputy Inspector General of
Police
Villupuram Range, Villupuram.

+3 ccs to M/s.M.Ravi, Advocate Sr.No.72753.

+3 ccs to The Government Pleader Sr.No.72895,72896,72897.

CU(CO)
DCP/13.12

WP Nos.17596, 17651 and
19069 of 2006